

No. 10414

United States
Circuit Court of Appeals
For the Ninth Circuit.

*Transcripts in Charge
of Clerk.*

JARMON THOMAS CONWAY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

FILED

AUG - 2 1943

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

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Phoenix National Bank Building,
Phoenix, Arizona

Attorney for appellant.

FRANK E. FLYNN,

United States Attorney,

JAMES A. WALSH,

ELBERT R. THURMAN,

Assistant United States Attorneys,
U. S. Courthouse,
Phoenix, Arizona.

Attorneys for appellee. [3*]

In the District Court of the United States
For the District of Arizona.
C-6420 PHX

INDICTMENT

Violation 50 U.S.C. 311 (Selective Training
and Service Act.)

United States of America,
District of Arizona—ss.

In the District Court of the United States in and
for the District of Arizona, at the November Term
Thereof, A. D. 1942.

The Grand Jurors of the United States, impaneled, sworn and charged at the term aforesaid, of the Court aforesaid, on their oath present that on the 14th day of May, 1942, at Glendale, Arizona, and within the jurisdiction of this Court, Jarmon Thomas Conway, whose full and true name other than as given herein is to the Grand Jurors unknown, being then and there a person liable for training and service under the Selective Training and Service Act of 1940, and the amendments thereto, and having theretofore registered under said Act, knowingly, wilfully, unlawfully, and feloniously did fail and neglect to perform a duty required of him under and in the execution of said Act and the Rules and Regulations duly made pursuant thereto, in this, that the said Jarmon Thomas Conway, having been classified in Class IV-E by his local board, being Maricopa County Local Board No. 6, created and located in Maricopa County, Arizona, under and by virtue of the provisions of the Selective Training

and Service Act of 1940, as amended, and the Rules and Regulations issued thereunder, and said defendant having been duly assigned by said board to work of national importance under civilian direction, and having been duly ordered and notified by said board to report for work of national importance under civilian direction, a copy of which said order and notice is in words and figures as follows, to-wit: [4]

“Local Board No. 6 81
Maricopa County 013
 006

May 4, 1942
(Date of mailing)

May 4 1942
213 E. Glendale Ave.
Glendale, Arizona
(Stamp of local board)

ORDER TO REPORT FOR WORK OF
NATIONAL IMPORTANCE

The President of the United States,
To Jarmon (first name), Thomas (middle name),
Conway (last name)
Home address Route 11, Box 1170, Phoenix, Arizona.
Order No. 1938

Greeting:

Having submitted yourself to a local board composed of your neighbors and having been classified under the provision of the Selective Training and Service Act of 1940, as amended, as a conscientious objector to both combatant and noncombatant mili-

tary service (Class IV-E), you have been assigned to work of national importance under civilian direction. You have been assigned to the Civilian Public Service #31 Camp, located at Placerville, California, in the State of California.

The Selective Service System will furnish you transportation to the camp, provided you first go to your local board named above and obtain the proper instructions and papers.

You will, therefore, report to the local board named above at 9:30 A. M. (Time) on the 14th day of May, 1942. Local Board Address: 213 E. Glendale, Glendale, Ariz.

You will be examined at the camp for communicable diseases, and you will then be instructed as to your duties.

Wilful failure to report promptly to this local board at the hour and on the day named in this notice is a violation of the Selective Training and Service Act of 1940, as amended, and may subject you to a fine and imprisonment.

You must keep this form and take it with you when you report to your local board.

(signed) J. S. BRAZILL

Member of Local Board [5]

The action of said local board, as aforesaid, being pursuant to the power conferred upon said board by the Selective Training and Service Act of 1940, and the amendments thereto, and the Rules and Regulations duly made pursuant thereto, knowingly, wilfully, unlawfully and feloniously did fail and neglect to report to his said local board at 9:30

A. M. on the 14th day of May, 1942, or at any other time, for work of national importance under civilian direction, as he was required to do by said order.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

F. E. FLYNN

United States Attorney.

Indictment A true bill, Sam W. Seaney Foreman.

[Endorsed]: Filed Jan. 28, 1943 [6]

In the United States District Court
for the District of Arizona

October 1942 Term at Phoenix

MINUTE ENTRY OF WEDNESDAY,
FEBRUARY 17, 1943
(Phoenix Division)

Honorable Dave W. Ling, United States
District Judge, Presiding
C-6420

[Title of Cause.]

Frank E. Flynn, Esquire, United States Attorney and James Walsh, Esquire, Assistant United States Attorney, appear for the Government. The Defendant, Jarmon Thomas Conway, is present in person with his counsel Wm. H. Chester, Esquire and now presents Motion to Quash Indictment. Argument is now had by counsel for the defendant, and

It Is Ordered that said Motion to Quash Indictment be and it is denied.

The defendant's plea is not guilty as charged in the indictment, which plea is now duly entered, and

It Is Ordered that this case be set for trial March 23, 1943 at ten o'clock a. m. [7]

In the United States District Court
For the District of Arizona

[Title of Cause.]

VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant Jarmon Thomas Conway Guilty in the manner and form as charged in the indictment.

FRANK M. POOL,
Foreman.

[Endorsed]: Filed Apr 9, 1943 [8]

In the United States District Court
for the District of Arizona

C-6420 Phoenix

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JARMON THOMAS CONWAY,

Defendant.

JUDGMENT

Due proceedings having been had on the indictment filed herein presented against the defendant above named charging a violation of Title 50, United States Code, Section 311;

It Is Ordered, Adjudged and Decreed that said defendant is guilty of said crime and in punishment thereof that said defendant be committed to the custody of the Attorney General of the United States or his duly authorized representative for imprisonment in such place of confinement as the said Attorney General shall designate for a term of three (3) years;

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Dated at Phoenix, Arizona, this 19th day of April, 1943.

DAVE W. LING

Judge

[Endorsed]: Filed Apr 19 1943 [9]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of Appellant: Jarmon Thomas Conway, Glendale, Arizona.

Name and address of Appellant's Attorney: W. H. Chester, 412 Phoenix Nat'l Bank Building, Phoenix, Arizona.

Offense: Violation of Title 50 U. S. C. Section 311 (Selective Training & Service Act).

Date of Judgment: April 19, 1943.

Brief description of Judgment and Sentence: Verdict of guilty returned on April 9, 1943, of failing and neglecting to report as a Conscientious Objector for civilian work of national importance when notified so to do by his local Selective Service Board. Sentence of three years in Federal Penitentiary made and entered April 18, 1943.

Name of prison where confined if not on bail: On bail.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned upon the grounds set forth below.

JARMON THOMAS CONWAY
Appellant.

W. H. CHESTER

Attorney for Appellant. [10]

GROUNDS FOR APPEAL

I.

That the verdict is contrary to law.

II.

That the verdict is contrary to the weight of the evidence.

III.

That the court erred in the decision of matters of law during the course of the trial.

IV.

That the Court erred in matters pertaining to procedure and evidence during the course of the trial.

V.

That the Court erred in sustaining objections to evidence offered by Appellant during the course of the trial.

VI.

That the Court erred in overruling objections to evidence offered by the United States Attorney during the course of the trial.

VII.

That the court has misdirected the jury on a matter of law.

VIII.

That the Court erred in refusing to give instructions to the jury as requested by the defendant.

IX.

That the Court erred in that Title 50 U.S.C. Section 311 as construed and applied by the trial Court violates the Fifth Amendment to the United States Constitution and deprives the Appellant of liberty and property without due process of law and without opportunity to be heard.

X.

That Title 50 U.S.C. Section 311 as construed and applied by the trial court violates the First and Fourteenth [11] Amendments to the United States Constitution, and deprives the defendant of freedom of religion and due process of law.

XI.

That Title 50 U.S.C. Section 311 as construed and applied by the trial court violates the Thirteenth Amendment to the United States Constitution, and under such construction it subjects the defendant to involuntary servitude.

Respectfully submitted

W. H. CHESTER

412 Phoenix Nat'l Bank Bldg.

Phoenix, Arizona,

Attorney for Appellant.

Received copy April 19, 1943.

E. R. THURMAN

Asst. U. S. Attorney.

[Endorsed]: Filed Apr. 19, 1943. [12]

[Title of District Court and Cause.]

APPEAL BOND

United States of America

District of Arizona—ss.

Be it Remembered, that on this 19 day of April, 1943, the Honorable Dave Ling, Judge of the District Court of Arizona, personally came Jarmon Thomas Conway, Principal and National Automobile Insurance Company as surety and jointly and severally acknowledge themselves to owe the United States of America the sum of One Thousand Two Hundred Fifty and no/100 (\$1250.00) Dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the conditions hereinafter set forth.

Whereas, lately in the April, 1943 term of the District Court of United States for the District of Arizona in a suit pending in said Court between the United States of America as plaintiff and Jarmon Thomas Conway as defendant, a judgment and sentence was rendered against said Jarmon Thomas Conway and said Jarmon Thomas Conway has taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in aforesaid suit, and notice of said appeal having been filed with the clerk of the District Court of United States for the District of Arizona and a copy of said appeal served on the United States Attorney for the District of Arizona

in manner and within time required by law and rules of court in such cases made and provided.

Now the Condition of This Recognizance is such that if [13] Jarmon Thomas Conway shall appear in the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco, State of California on such day or days as may be appointed by said Court, and upon such day or days as may be appointed by said Court until finally discharged therefrom and shall abide by and obey all orders of the Circuit Court of Appeals and surrender himself in execution of judgment and sentence of the District Court of the United States for the District of Arizona if said judgment against him shall be affirmed by the United States Circuit Court of Appeals for the Ninth Circuit and shall prosecute his appeal to effect and shall pay all taxable costs on appeal if he fails to make his appeal good, then the above obligation to be void, otherwise it shall be and remain in full force and effect.

And the surety or sureties in this obligation hereby covenants and agrees that in case of breach of any of the conditions of this bond, the United States District Court for the District of Arizona may upon notice to said surety or sureties of not less than ten days, proceed summarily in this cause to ascertain the amount of costs in the Circuit Court of Appeals for the Ninth Circuit, which said surety or sureties is bound to pay on account of such breach and render judgment therefor against said surety or sureties and to order execution therefor.

Judgment and sentence in this cause was entered on April 19, 1943 against Jarmon Thomas Conway on a charge of having, on or about the 14th day of May, 1942, unlawfully and in violation of Section 311, Title 50 of the United States Code, failing and neglecting to report as a conscientious objector for civilian work of national importance when notified so to do by his local Selective Service Board at Glendale, Arizona, contrary to the form of the statute in such cases made and provided and [14] against the peace and dignity of the United States of America.

Sealed with our seal and dated this 19 day of April, in the year of our Lord, 1943.

JARMON THOMAS CONWAY

Principal.

NATIONAL AUTOMOBILE

INSURANCE COMPANY

A California Corporation.

By ED GROVES,

Attorney-in-Fact.

Approved this 21 day of April, 1943.

DAVE W. LING.

[Endorsed]: Filed Apr. 21, 1943. [15]

In the United States District Court
 For the District of Arizona
 April, 1943, Term at Phoenix

MINUTE ENTRY OF SATURDAY,
 MAY 15, 1943

(Phoenix Division)

Honorable Dave W. Ling, United States District
 Judge, Presiding.

No. C-6420 Phoenix.

[Title of Cause.]

James A. Walsh, Esquire, Assistant United States
 Attorney, appears as counsel for the Government.
 Wm. H. Chester, Esquire, is present on behalf of
 the defendant. On motion of said counsel for the
 defendant,

It Is Ordered that defendant's time to file Bill
 of Exceptions herein be extended to and including
 June 9, 1943. [16]

[Title of District Court and Cause.]

BILL OF EXCEPTIONS.

Be it Remembered that in the District Court of
 the United States, for the District of Arizona, the
 Honorable Dave W. Ling, Judge of said Court pre-
 siding, and Frank E. Flynn appearing as attorney
 for plaintiff and W. H. Chester appearing as at-
 torney for the defendant, the following proceedings
 were had:

That on the 17th day of Feby., 1943, the defendant filed the following Motion to Quash Indictment:

“(Title of Court and Cause)

Comes now the defendant above named and moves the Court to quash the indictment in the above numbered cause for the reasons hereinafter stated:

I.

That the indictment fails to state facts sufficient to constitute a crime or offense against the United States.

II.

That the indictment fails to state that the action of the Glendale, Arizona local selective service board acted in accordance with the rules and regulations of the selective service system or that it acted in accordance with the Selective Service Act and the provisions thereunder.

III.

Indictment fails to show that the defendant was properly classified or that the orders of the board were in accordance with the rules, regulations and laws pertaining to the Selective Service System.

IV.

That the defendant herein has been heretofore tried before [17] this court for the same offense charged herein and that this indictment (*constites*) double jeopardy.

W. H. CHESTER,
Attorney for Defendant,
412 Phoenix Nat'l Bank Bldg.
Phoenix, Arizona.

POINTS AND AUTHORITIES

There are no facts alleged in the indictment to show that the defendant was required under the provisions of the Selective Service Act to report as the Glendale, Arizona local board ordered. Nor were there any facts alleged to show that the defendant properly came under classification and orders of the said board.

50 U.S.C.A. Section 303 (g).

Every fact necessary to constitute the crime charged must be directly and positively alleged and nothing can be charged by implication or indictment.

U.S. vs. Britton, 107 U.S. 655;

U.S. vs. Cruikshank, 92 U.S. 542.

Omission from the indictment of any fact or circumstance necessary to constitute an offense will be fatal.

Harris vs. U. S., 104 Fed. (2nd) 41.

Indictment is so indefinite and uncertain that the defendant cannot properly raise the Constitutionality of the Statute and is so indefinite and uncertain as not to provide a reasonable standard of guilt or innocence.

Indictment is in contravention of the 5th and 13th Amendments of the Constitution of the United States of America.

W. H. CHESTER,

Attorney for Plaintiff.

That on the 17th day of February, 1943, said motion came on to be heard and on the 17th day of

February, 1943, the Honorable court entered its order denying said motion to quash the indictment.

[18]

That on the 9th day of April, 1943, upon the trial of said cause

THOMAS B. RIORDAN

was called as a witness on behalf of the plaintiff and testified as follows:

“Q. What is your business or occupation?

A. Clerk of the Selective Service Board, Local Board No. 6, Glendale, Arizona.

Q. Who has custody of the books and records of the Local Board. A. I do.

Q. As Secretary? A. Yes, sir.

Q. Mr. Riordan, handing you Government's Exhibit No. 1 for identification, I will ask you if that is a part of the records of your board?

A. Yes; it is.

Q. Do you know whose signature appears at the bottom there?

A. Yes, sir, the signature of the defendant Jarmon Thomas Conway.

Q. And at the time this exhibit was received by your Board, was this pencil line on it?

A. No, it was not.

Q. Do you know where that line came from?

A. That was put on there at a later date by clerk, Mrs. Stoddard.

Q. And this line here in pen and which has now been run through, was that on it?

(Testimony of Thomas B. Riordan.)

A. No; it was not.

Q. Do you know where that came from?

A. That was put on at a later date by the Clerk, Mrs. Stoddard.

Mr. Walsh: We offer it in evidence.

Mr. Chester: I'd like to ask Mr. Riordan a question on voir dire, your Honor.

The Court: Yes.

Mr. Chester: Q. Mr. Riordan, are you well acquainted with the signature of Jarmon Conway?

A. I have seen him—I know his signature, yes, sir. I have seen him write it. [19]

Q. How often have you seen him?

A. I saw him write it once.

Q. Once? A. Yes, sir.

Mr. Chester: I object, your Honor. I don't believe the man is qualified to recognize the signature after seeing it at one time.

Mr. Walsh: Well, it is admissible as a part of the records of the Board in any event, your Honor. He has testified that he is the custodian of it and it is a part of the records of the Local Board.

The Court: Yes.

Mr. Chester: He testified he knew the signature. I have no objection to its being in evidence, I have no objection to the exhibit to that effect.

The Court: Well, it may be received:

(Thereupon on April 9, 1943, plaintiff proposed and offered in evidence the following paper:)

(Testimony of Thomas B. Riordan.)

“GOVERNMENT’S EXHIBIT 1.

“Serial Number 1817. Jarmon Thomas Conway. Order No. 1838. Address R. R. 11 Box 1170, Phoenix, Maricopa, Ariz. Age 21 years. Place of Birth Coffman Co. Texas. Country of Citizenship U. S. A. Date of Birth Jan 6, 1918.

Name of person knowing address;

Mr. Frank M. Richardson, Brother in law R. R. 11, Box 1170 Phoenix, Maricopa, Arizona.

Employer: Norman Nursery: Place of Employment 2508 N. Central, Phoenix, Maricopa, Arizona.

I affirm that I have verified above answers and that they are true.

JARMON CONWAY.

(Back side of Card)

“Description of Registrant

Race, White Height 6 Ft. Weight 160.

Complexion Ruddy. Eyes Brown. Hair Brown.

Signed by registrar Ethel Harper, October 16, 1940.”

And the said Thomas B. Riordan further testified for the plaintiff as follows:

By Mr. Walsh:

Q. Mr. Riordan, I hand you Government’s Exhibit No. 2, for identification, and ask you if that is a part of the records of your Board.

A. Yes; it is. [20]

Q. And it is a record required to be kept by

(Testimony of Thomas B. Riordan.)

your Board under the Selective Service Rules and Regulations? A. Yes; it is.

Q. Who is the Chairman of the Board?

A. Mr. J. S. Brazill.

Q. Are you acquainted with his handwriting?

A. I am.

Q. Is that his signature that appears on the first page of it.

A. Yes; that is his signature.

Mr. Walsh: We offer it in evidence.

Mr. Chester: No objection.

(Thereupon the following paper was offered and proposed in evidence by the plaintiff:)

GOVERNMENT'S EXHIBIT 2 IN EVIDENCE

(This exhibit being a Selective Service Questionnaire of Jarmon Conway, gives the following answers to the questions therein in substantially the form as follows:

Name: Jarman Thomas Conway,

Residence: R 11 Box 1170, Phoenix, Maricopa, Arizona.

Social Security Number 526-14-4949.

I have physical or mental defects or diseases.

Slightly hard of hearing. I have completed 7 years of elementary school and 0 years of high school.

I am working at present time.

The job I am working at now is nursery man.

My duties are plant shrubbery, grade lawns, etc.

(Testimony of Thomas B. Riordan.)

I have done this kind of work for 2 years.

My average weekly earnings in this job are \$14.00.

In this job I am an employee, working for salary, wages, commission or other compensation.

My employer is Norman Nurseries, 2508 N. Central Avenue, Phoenix, Arizona, whose business is Nursery Business.

Other business or work in which I am now engaged is preaching the gospel.

I am licensed as truck and tractor driver.

I am not an apprentice.

I have also worked at the following occupations other than my present job, during the last 5 years.

Farmer, Raising cotton, 1936 to 1937.

Nursery Man planting shrubs, Etc. 1937 to 1941.

I am single.

I have no children.

I am a minister of religion.

I do customarily serve as a minister.

I have been a minister of the Jehovah's witnesses since October, 1938. [21]

I have not been formally ordained.

I am not a student preparing for the ministry in a theological or divinity school.

I was born at Tarrell, Texas, Kaufman (County).

I was born on January 6, 1919.

My race is white.

I am a citizen of the United States.

(Both paragraphs for conscientious objectors as to combatant and noncombatant service were checked by registrant.)

(Testimony of Thomas B. Riordan.)

I have not been convicted of treason or a felony.

Signed June 3, 1941 by Jarman Thomas Conway,
Subscribed and sworn to before Adam Abet, Notary
Public.

Minutes of Action by Local Board.

The Local Board Classifies the Registrant in class
4 Subdivision E, by the following vote: Ayes 3,
Noes None. 10-28-41.

J. F. BRAZILL,
Member.

Appeal to Board of Appeal.

I hereby appeal from the classification by the
Local Board in Class 4 Subdivision E 11-7-41.

JARMON T. CONWAY,
Signature of person appeal-
ing.

Minutes of action of Board of appeal.
The Board of Appeal classifies the registrant in
Class IV, subdivision E by the following vote Ayes
5 noes 0, January 23, 1942.

BLAINE B. SHIMMEL,
Chairman.

MINUTES OF OTHER ACTION

Nov 25, 1941. The Board of Appeal has this date
reviewed the file of this registrant and determined
that he should not be classed in IV (other than
IV-E) Class III, Class II, or Class 1-H.

BLANE B. SHIMMEL,
Chairman, Board of Appeal.

(Testimony of Thomas B. Riordan.)

By Mr. Walsh:

Q. Can you tell us, Mr. Riordan, in a general way what the document which has been received as Government's Exhibit 2 in Evidence is?

A. That is known as the Selective Service Questionnaire. Those questionnaires are mailed to each registrant, being in numerical order, and the registrant is given ten days from the date of mailing that questionnaire for him to fill it out and return it to the Local Board. When it is returned to the Local Board properly filled out, the Local Board then, at one of its meetings takes the questionnaire, and from the information contained in the questionnaire they classify the registrant.

Q. Did the Local Board procure the report of a physical examination of the defendant Conway in this case? [22]

A. They did, yes, sir.

Q. Do you recall from whom they obtained that report?

A. It was—they obtained—the examination was made by Dr. Leff of Glendale.

Q. Are you acquainted with Dr. Leff?

A. Yes, sir.

Q. How long have you known him?

A. I have known him for ten or fifteen years.

Q. Have you seen him write and sign his name?

A. Many times .

Mr. Walsh: Mark this.

(The document was marked as Government's Exhibit 3, for identification.)

(Testimony of Thomas B. Riordan.)

Mr. Walsh: Q. I hand you Government's Exhibit 3 for identification and ask you if the signature of Dr. Leff appears thereon?

A. It does, yes, sir. It is on page 2 of the physical report .

Mr. Walsh: I offer it in evidence.

Mr. Chester: No objection.

(The document was received in evidence as Government's Exhibit 3.)

And thereupon, the plaintiff offered in evidence the following paper:

“GOVERNMENT'S EXHIBIT 3 IN EVIDENCE

Report of Physical Examination

Conway, Jarmon Thomas, Order #1938 Race: White.

Occupation: Nurseryman,

Permanent address; Phoenix, Maricopa, Arizona, Mother tongue; English.

Birthplace Terrell, Texas. Date of Birth January 6, 1919.

STATEMENT OF PERSON EXAMINED

Have you had any experience in CCC work. No.

Do you consider that you are now sound and well? Yes.

What illness, disease, or accidents have you had since childhood? None except frequent colds.

Have you ever had any of the following? If so give dates; Sepples of unconsciousness, convulsions, or fits? No. Gonorrhoea No. Sore Penis No. Are

(Testimony of Thomas B. Riordan.)

you addicted to the use of habit forming drugs or narcotics? No.

Have you ever raised or spat up blood? No. [23]

When were you last treated by a physician, and for what ailment? Never.

Have you ever been treated at a hospital or asylum? No.

I certify that the foregoing question and my answers thereto have been read over to me; that I fully understand the question, and that my answers thereto are correctly recorded and true in all respects. I further certify that I have been fully informed and know that making or being a party to making any false statement as to my fitness for military service renders me liable to punishment by fine and imprisonment.

(Signed) By JARMON THOMAS CONWAY.

October 25, 1941.

This local Board finds the person named above is Qualified for general military service 4 E.

J. F. BRAZILL,

Date 10/28/41.

PHYSICAL EXAMINATION BY PHYSICIAN

1. Eye abnormalities. Pterggri.
2. Ear, nose, throat abnormalities chronic Phargn-gity.
3. Mouth and gum abnormalities. None apparent.
Teeth.
5. Skin OK.

(Testimony of Thomas B. Riordan.)

6. Varicose Veins. None.
7. Hernia. None.
8. Hemorrhoids. None.
9. Genitalia OK.
10. Feet OK.
11. Musculo skeletal defects none.
12. Abnormal viscera OK.
13. Cardiovascular system OK.
14. Lungs, including X-ray if made OK.
15. Nervous system reflexes pupillary OK Patellar OK.
16. Endocrine disturbances none apparent.
17. Blood test (slip attached Laboratory report of Serological Blood Test-Klein Neg.

Vision:

Right eye 20/20.

Left eye 20/20.

Hearing:

Right ear 20/20.

Left ear 20/20.

Height 70 in.

Weight 152 lb.

Girth (at nipples:

Inspiration 40½ In.

Expiration 38 in.

Girth (at umbilicus) 29½ In.

Posture OK.

Frame OK.

Color of hair Blond.

Color of eyes Brown.

Complexion Ruddy. [24]

(Testimony of Thomas B. Riordan.)

Pulse:

Sitting 72.

After exercise 120.

2 Min. after exercise 72.

Blood Pressure

Systolic 130.

Diastolic 70.

Urinalysis Sp. Gr. 1005.

Albumin neg.

Sugar Neg.

I certify that I have carefully examined and reviewed the record of the examination of the person named herein and that it is my judgment and belief that he is

Qualified for general military service.

Place; Glendale, Arizona, Date October 25, 1941.

(Signed) M. I. LEFF, M.D.,
Examining Physician”.

And the said witness Riordan testified further as follows:

By Mr. Walsh:

Q. Directing your attention to the first page of Government's Exhibit No. 3 in evidence, I will ask you if you know whose signature that is on the first page there.

A. That is the signature of J. S. Brizill, our Chairman of Local Board No. 6 at Glendale.

Q. Would you read the language appearing immediately above his signature there?

(Testimony of Thomas B. Riordan.)

A. "This Local Board finds that the person named above is qualified for general military service 4-E. Date 1028-41. J. S. Brizill, member of Local Board".

Mr. Walsh: May this be marked, please?

(The document was marked as Government's Exhibit 4 for identification.)

Mr. Walsh: Q. Mr. Riordan, I hand you Government's Exhibit No. 4 for identification, and I will ask you if that is a part of the records of your Board? A. Yes; it is.

Q. Is it a record required to be kept by the Board by the Selective Service Regulations?

A. Yes; it is.

Mr. Walsh: I offer it in evidence.

Mr. Chester: No objection.

(The document was received as Government's Exhibit 4 in evidence.) [25]

GOVERNMENT'S EXHIBIT 4 IN EVIDENCE

Special Form for Conscientious Objectors:

(Government's Exhibit 4 being regular form filled in by defendant, to which he made the following answers to the following questions substantially as set out therein.)

Name: Jarmon Thomas Conway: Route 11 Box 1170, Phoenix, Maricopa, Arizona.

1. Describe the nature of your belief which is the basis of your claim made in series 1 above.

The nature of my belief is fully explained by the ar-

(Testimony of Thomas B. Riordan.)

ticles attached which are publications by Watchtower Bible & Tract Society, of which I am a member. My allegiance is pledged entirely to Jehovah God and Christ Jesus; as they have no part in armed conflicts of this world neither can their servants of which I am consecrated to be one.

2. Explain how, when, and from or from what source you received the training and acquired the belief which is the basis of your claim made in series I above.

From the Holy Bible and from publications of Watchtower Bible & Tract society explanatory thereof.

3. Give the name and present address of the individual upon whom you rely most for religious guidance.

I do not rely upon any individual for spiritual guidance, only thru Jehovah and Christ Jesus.

4. Under what circumstances, if any, do you believe in the use of force?

Only at the command of Almighty God or his Theocratic King, Christ Jesus.

5. Describe the actions and behavior in your belief which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

I have for three years preached the Gospel of the Kingdom of Jehovah God from door to door, as Christ Jesus did. I have done this regularly since October, 1939.

6. Have you ever given public expression, written or oral, to the views herein expressed as the basis

(Testimony of Thomas B. Riordan.)

for your claim made in series I above. If so specify when and where.

Yes. I have, as above stated, given public expression since engaging in this work. I have gone from door to door in Phonix and vicinity preaching the word of Jehovah and distributing written bible phrophesy. This is done at the command of Jehovah. Matt 24:14.

1. Name and address of each school and college which I have attended:

Tona Rural School, Elementary, Located Tona Texas 1929 to 1931. Portia Rural School, Elementary, Portria, Texas, 1931 to 34. Dixie Consolidated Grade School, Tyler, Texas, 1934, 1936. [26]

2. Chronological list of all occupations, in which I have been engaged:

Farm Work, Employer, Arthur W. Conway, Father,
Rt 11 Box 1170 1936.

Farm Work Employer Chas. Pearson, Paducah, Texas, 1936 to 1937.

Farm Work J. C. Rodgers, 20th and Campbell Ave. 1937 to 1938.

Farm Work, Norman Nurseries, 2508 N. Central, Phoenix, 1938 to 1941.

3. Addresses and dates of residence where I have formerly lived:

Terrell, Texas Street, None 1919 to 1931.

Tyler Texas Street none 1931 to 1936.

Paducah Texas Street none 1936 to 1937.

(Testimony of Thomas B. Riordan.)

Phoenix, Arizona, R 11 Box 1170 1937 to 1941.

4. Name, address and country of birth of parents:
Walter Arthur Conway, Father, living born Texas,
U. S. A.

Ollie Dace Conway, Mother, living, born Texas,
U. S. A.

Participations in organizations. None.

2. Are you a member of a religious sect or organization. yes.

State the name of the sect, and the name and location of its governing body or head if known to you; Jehovah's Witnesses, which are a Christian group engaged solely in the dissemination of bible truths. When, where, and how did you become a member of said sect or organization.

I became a member thru diligent study of the Bible and publications explaining the same and convinced myself and now publish this gospel. Phoenix, Arizona, October, 1939.

State the name and location of the church, congregation, or meeting where you customarily attend.

Kingdom Hall where studies are held is located at 1216 West Washington, St., Phoenix, Arizona.

Give the name and present address of the pastor or leader of such church, congregation, or meeting.

V. Lee Potter, company servant, Local company Jehovah's Witnesses.

Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war;

We have no official statement of creed. The bible

(Testimony of Thomas B. Riordan.)

which is my guide commands us to render our services fully unto Jehovah God.

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than religious or military.

None. [27]

Give here the name and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

V Lee Potter, Box 2343 Phoenix, Minister, relationship to me none.

F. M. Richardson R 11 Box 1170 Phx Nurseryman, Bro-in-law.

J. C. Stefer, Mission Drive & 19th Ave Nurseryman, relationship to me. none.

Signed by Jarmon Thomas Conway,

Subscribed and sworn to before Adam Abet, Notary Public, June 3, 1941."

Thereafter Riorden testified as follows:

Mr. Walsh: Q. Mr. Riordan, with reference to Government's Exhibit No 4 in evidence, can you tell us in a general way what that exhibit is?

A. This is what is known as a D.S.S. form 47. It is a special form for conscientious objectors. In other words, when a man claims he is a conscientious objector he requests that we given him this form. Or he can go into any local board nearest to where he is and request that Board to give him that form 47, and they, in turn, will be glad to give it to him

(Testimony of Thomas B. Riordan.)

and then he fills out all of the information asked for on the form and returns it to the Local Board. The information here is in regard to his church that he belongs to and all the information showing why that man is a conscientious objector, why he claims to be a conscientious objector. The Board then reviews this form and the evidence contained therein, and if they feel satisfied with the information there that the man is a conscientious objector, why, then they grant his request and place him in a classification which is given a conscientious objector.

Q. And that particular form was filed by the defendant Conway with your Board in this case?

A. Yes, this was filed by him in his case, and it was properly signed and acknowledged.

Mr. Walsh: May this be marked, please?

(The document was marked as Government's Exhibit 5 for identification.)

Mr. Walsh: Q. I hand you Government's Exhibit No. 5 for identification, and ask you if that is a part of the records of your Board?

A. Yes; it is.

Q. And was the entire exhibit received all at one time, and as one document?

As I recall, it was, yes, sir; it all came in together.

[28]

Mr. Walsh: We offer it in evidence.

Mr. Chester: No objection.

(The document was received as Government's Exhibit 5 in evidence)

Which exhibit is as follows:

(Testimony of Thomas B. Riordan.)

GOVERNMENT'S EXHIBIT 5 IN EVIDENCE

“Phoenix, Arizona, June 3, 1941.

Dear Sirs:

Please consider the information inclosed I desire to be classed in 4-D. The plase of a regular minister. If you don't see fit to put me in class 4-D. Please send me the appeal papers.

Truly yours,

JARMON T. CONWAY.

Route 11 Box 1170,

Phoenix, Arizona.

(to which letter was attached:)

A pamphlet entitled “Neutrality” published by Watchtower Bible and Tract Society, Inc., International Bible Students Association, Brooklyn, New York.

And

Affidavit by V. Lee Potter to the effect that Jarmon Thomas Conway is actively engaged in preaching the gospel and discharging the duties of a regular minister of Religion. That he had been a Jehovah's witness since the month of October, 1939, and

Three pages of printed matter designated “An important letter to the Department of Justice, dated October 9, 1940).”

And thereafter said witness Riordon testified further:

Mr. Walsh: Q. Directing your attention to the last page of Government's Exhibit No. 2 in evi-

(Testimony of Thomas B. Riordan.)

dence, Mr. Riordan, can you tell me whose signature appears under the place marked "Minute of Action?"

A. That is the signature of J. S. Brizill, Chairman of Local Board No. 6 at Glendale, Ariona.

Q. And the entries immediately above it, do you know by whom that was made?

A. I made that.

Q. By whose authority?

A. By the authority of the Local Board at Glendale. [29]

Q. And the date that it bears, do you know who endorsed that on there? A. I did.

Q. By what authority?

A. By the authority of the Local Board.

Q. From the minutes, those minutes, Mr. Riordan, can you tell us what classification the defendant Conway received?

A. He was given classification of a conscientious objector, Class 4-E.

Q. And on what date?

A. On October 28th, 1941.

Q. Was that classification given at a regular meeting of Local Board No. 6?

A. Yes; it was.

Q. Were you present at the meeting?

A. I was.

Q. And do you know whether or not the entire file of the defendant Conway was then before the Board?

A. Yes; the entire file—everything that we had

(Testimony of Thomas B. Riordan.)

received from Mr. Conway or any other source pertaining to his case was in his cover sheet, and the cover sheet—the entire cover sheet was before the Board at the time.

Q. Did it include Government's Exhibit No. 2, which you have before you.

A. Yes; it did.

Q. And Government's Exhibit No. 3, which is his physical examination? A. It did.

Q. Did it include Government's Exhibit No. 4, which is the form of the conscientious objector?

A. Yes; it did.

Q. And did it include Government's Exhibit No. 5, which is the letter and attached document which have just been admitted into evidence?

A. Yes, sir; it did.

Q. Was any consideration given to the question of classifying the defendant Conway as in 4-D?

A. Yes, sir.

Q. And what discussion was had on that particular question? [30]

A. Well, 4-D is a classification given to a minister, and the defendant claimed that he was a minister of the Jehovah Witnesses. At that time we had a list in our office that was furnished us by our headquarters and to our headquarters from the National Headquarters, a list showing all the ministers of the Jehovah Witness Sect, and that list was furnished by the Jehovah Witnesses themselves to the National Headquarters, and upon checking that list we could not find Mr. Conway's name on

(Testimony of Thomas B. Riordan.)

it as being a minister, so, therefore, the Board denied him—that is, denied his plea as that of a minister, and put him in Class 4-E because he did not appear on their list as a minister.

Q. Class 4-E is the classification of a conscientious objector?

A. That is. They recognized that he was a conscientious objector and they put him in that class.

Q. After the defendant had been classified in 4-E did you see him? A. Yes, sir.

Q. And where did you see him?

A. He came into the office.

Q. Do you remember what date it was, approximately? A. No, I don't.

Q. After he had been classified 4-E did you send him a notice. A. Yes, sir.

Q. Of his classification? A. Yes, sir.

Q. And was it subsequent to the time when you mailed him that notice that he came in?

A. Yes, sir.

Q. And that would be about when, to the best of your recollection?

A. Well, I'd have to check up to see what date we mailed that. It was some time after his classification as 4-E.

(A book record was furnished the witness)

The Witness: We mailed him his classification card on October 29th, 1941, and it was on or about the 7th day of November that he was in the office again.

(Testimony of Thomas B. Riordan.)

Q. And did you have any conversation with him at that time?

A. Yes. He came in and stated that he wished to appeal, make an appeal from his classification.

[31]

Q. And directing your attention to the last part of the page on the questionnaire there, does his signature appear thereon. A. Yes, it does.

Q. And was it signed in your presence?

A. It was, yes.

Q. Will you read the part appearing immediately above his signature?

A. It is "Appeal to Board of Appeal. I hereby appeal from the classification by the Local Board in Class 4, Sub-division E. 11-7-41." The signature of the person appealing: "Jarmon T. Conway."

Mr. Walsh: May this be marked as an exhibit?

(The document was marked as Government's exhibit 6 for identification).

Mr. Walsh: Q. I hand you Government's Exhibit No. 6. for identification, and ask you if they are a portion of the records of your Local Board in this case? A. Yes; they are.

Mr. Walsh: I offer them in evidence.

Mr. Chester: No objection.

(The documents were received as Government's Exhibit 6 in evidence)

Being as follows:

(Testimony of Thomas B. Riordan.)

GOVERNMENT'S EXHIBIT No. 6
IN EVIDENCE

“Phoenix, Arizona, Route 11, Box 1170, November
7, 1941.

Selective Service Board No. 6,
Glendale, Arizona.

Dear Sir:

I, Jarmon Thomas Conway, desire to appeal from my classification of 4E and wish to be properly classed as I suggested in my questionnaire, as that of an Ordained minister D4. I should like to call to your attention that Section XXX, paragraph 385 Vol. 3, particular paragraph 5 in which according to General Hershey, I should be classed as 4D.

As new evidence I present a copy of consolation magazine of July 9, 1941, of which I call your attention pages 22 and 25.

Asking your cooperation on this matter that I might enjoy my full rights.

Respectfully yours,

JARMON T. CONWAY.”

And attached to the letter was:

“Phoenix, Arizona, Route 11 Box 1170, November
19, 1941.

I, Thomas Jarmon Conway, as one of Jehovah's Witnesses, claim exemption from training and service and the classification of 4D as a duly ordained minister of religion under section five D, Selective Training and Service Act 1940 paragraph 360 selective service and [32] which reads as follows: (See paper inclosed)

(Testimony of Thomas B. Riordan.)

I should have classification 4D according to the facts and statements that I have sent the local draft board Glendale, Arizona. As I go from door to door, street magazine distribution, and also have part in Model Bible studies I should have the classification 4-D. Further proof is cited from the Scriptures: "The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek he hath sent me to bind up the broken hearted, to proclaim liberty to the captives, and the opening of prisons to them that are bound; to proclaim the acceptable year of the Lord and the day of vengeance of our God and to comfort all that mourn" (Isa. 61:1&2) also "This gospel of the Kingdom must be preached unto all nations as a witness and then shall the end come" Matt 24:14. I have kept nothing back from you that was profitable unto you, but have showed you and taught you publicly and from house to house (Acts 20:20) Signed by Jarmon T. Conway. Subscribed and sworn to before Adam Abet, Notary Public.

And to which letter was also attached:

Four pages of printed matter designated as Vol III Opinion No. 14, National Headquarters Selective Service System: Subject Ministerial status of Jehovah's Witnesses.

Signed by Lewis B. Hershey, Deputy Director, dated June 12, 1941."

(Testimony of Thomas B. Riordan.)

And Witness Riordan thereafter testified as follows:

Mr. Walsh: Q. I believe you testified awhile ago, Mr. Riordan, that you had checked a list of the ministers of Jehovah's Witnesses in your office at Glendale? A. Yes, sir.

Q. Did you on behalf of the Board, make any further investigation as to whether or not the defendant Conway was on any list of ministers of the sect known as Jehovah's Witnesses?

A. Yes; I did.

Q. What did you do in that regard?

A. Well, I *thought* maybe that there might be a revised list or there might be a later list that his name would appear on, so I called our State Headquarters to ask them whether or not they had a list down there of—a revised list of Jehovah Witness ministers, and asked them to check their list to ascertain whether or not Jarmon Thomas Conway was on that list, listed as a minister.

Q. Did you receive any report from your State Headquarters in that regard?

A. I did, yes, sir.

Mr. Walsh: May this be marked? [33]

(The document was marked as Government's Exhibit 7 for identification)

Mr. Walsh: Q. I hand you Government's Exhibit 7 for identification and ask you if that is the report which you received?

A. Yes; that is the report that I received from our State Headquarters.

(Testimony of Thomas B. Riordan.)

Q. And this is a part of the Local Board's file in relation to this defendant? A. Yes; it is.

Mr. Walsh: I offer it in evidence.

Mr. Chester: Well, your Honor, I object to this particular letter here as immaterial. The question qualifying a man, whether he is a minister or not does not depend whether his name is shown on the list. In accordance with your Exhibit No. 6, Opinion No. 14 of the Selective Service Board, there is nothing in that opinion that shows a man has to appear on that list.

Mr. Walsh: It certainly goes, your Honor, to the question as to whether or not the Board gave him a hearing and what the Board attempted to do in order to decide the thing fairly.

The Court: There would have to be some way of determining whether a man is a minister. Everyone selected under the Selective Service Act would say, "I am a minister, I don't have to go to war", and that would end it.

Mr. Chester: There is nothing in here that says a man is not a minister.

Mr. Walsh: Maybe the court should see the letter.

The Court: Well, it depends on somebody else other than the individual to determine whether he is a minister or not. I say, anybody selected under the Act would say, "I am a minister," and that would end it. It wouldn't make any sense. It may be received.

Mr. Chester: Exception:

(The document was received as Government's Exhibit 7 in evidence).

(Testimony of Thomas B. Riordan.)

Being as follows:

GOVERNMENT'S EXHIBIT NUMBER 7 IN
EVIDENCE

(Being a letter from A. M. Tuthill, State Director
Selector service, to J. S. Brazill, Chairman, Maricopa
County Local Board No. 6, Glendale, Arizona; and
reads as follows:

“Answering your telephoned request of November
15, 1941, the name of Jarmon Thomas Conway does
not appear in the official list of Jehovah's Wit-
nesses known as “Bethel Family” and as “Pioneers”
as furnished this office by National Headquarters,
Selective Service System” [34]

Thereafter Witness Riordan testified as follows:

Mr. Walsh: Q. Mr. Riordan, after the defendant
Conway had filed with the Board notice of appeal
that you have identified, was his file thereafter
forwarded to the Board of Appeals?

A. It was, yes, sir.

Q. Where is that board located?

A. That Board is located at 318 Professional
Building. It was located at 318 Profession Building
at that time.

Q. That is, the Board of Appeals of this State?

A. That is where we mailed the file. That is our
State Headquarters.

Q. And what was mailed to the Board?

(Testimony of Thomas B. Riordan.)

A. Everything in the man's cover sheet.

Q. Including all of the letters, documents and records which you have introduced here as exhibits?

A. Everything pertaining to this man's case. Every note and memorandum that was made was in that cover sheet and everything was forwarded to the Board of Appeals.

Q. And did you thereafter receive the file back from the Board of Appeals? A. Yes; we did.

Q. Directing your attention to the last page of Government's Exhibit No. 2 in evidence, I will ask you if there appears thereon any endorsement made by the State Board of Appeals?

A. Yes, there are just——

Q. (Interrupting) And would you read that, please?

A. It says: "Minutes of Action by Board of Appeal. The Board of Appeal classifies the registrant in class 4, sub-division E, by the following vote: Ayes 5, Noes none. January 23, 1942. Blaine B. Shimmel, Chairman."

Q. Did you thereafter notify the defendant Conway concerning the continuance of his classification under Class 4-E? A. Yes, we did.

Q. How did you so notify him?

A. By a card. There is a card that we have that states on it that you are continued in Class 4-E by the Board of Appeal—by vote of five to nothing, and that is mailed to his address notifying him.

Q. And did you notify the National Headquarters

(Testimony of Thomas B. Riordan.)

that the defendant Conway had been continued in Class 4-E? [35]

A. Well, we didn't notify him that he had been continued in Class 4-E. We notified them that he was in Class 4-E.

Mr. Walsh: May this be marked, please?

(The document was marked as Government's Exhibit 8 for identification).

Mr. Walsh: Q. I hand you Government's Exhibit No. 8 for identification, and ask if that is part of the records of your Board in this case?

A. Yes; that is.

Q. And can you tell us how it was received by the Board?

A. Well, D.S.S. Form 48 was made up by our Board notifying—it is a conscientious objector's report. This report is made, as I say, by our Board, and we mail it to the—our State Headquarters, and they, in turn, mail it to the National Headquarters. Form 49 is from the National Headquarters of the Selective Service System at Washington, D. C. It is an assignment to work of National importance. They assigned the registrant to a civilian public service camp and they—in that—this assignment they give us the camp that the registrant is to be assigned to, the place that the camp is, that and the date and hour that the man is to report to that camp.

Q. And was this received by your office from the State Headquarters?

(Testimony of Thomas B. Riordan.)

A. It was received by our office from the State Headquarters.

Mr. Walsh: I offer it in evidence.

Mr. Chester: No objection.

(The document was received as Government's Exhibit 8 in evidence)

And is as follows:

GOVERNMENT'S EXHIBIT No. 8 IN
EVIDENCE

Assignment to Work of National Importance.

(Dated April 17, 1942, Registrant Jarmon Thomas Conway, assigned to work of national importance by order of Local Board will be delivered to: Camp Director of Civilian Public Service Camp No. 31, at Placerville, Eldorado County, California, on May 15, 1942.

Signed by Lewis B. Hershey, Director."

to which was attached carbon copy of Conscientious Objector report.

Showing Jarmon Thomas Conway, Classification IV-E,

Order No. 1938, Race White Age 22, occupation Nurseryman, Church affiliation Jehovah's Witnesses. In case of emergency notify: Frank M. Richardson, Relationship Brother-in-law- [36] Route 11, Box 1170 Phoenix, Arizona, Date November 1, 1941.

And thereafter Witness Riordan testified further:

Mr. Walsh: Q. Mr. Riordan, I hand you Govern-

(Testimony of Thomas B. Riordan.)

ment's Exhibit No. 9 for identification, and ask you if that is a part of the records of your Local Board?

A. Yes; it is.

Q. It is apparently a copy?

A. This is a copy of D.S.S. Form 50, which is an order to report for work of National importance.

Mr. Walsh: I offer it in evidence.

Mr. Chester: No objection.

(The document was received as Government's Exhibit 9 in evidence)

Which Exhibit was as follows:

GOVERNMENT'S EXHIBIT 9 IN EVIDENCE

Order to Report for Work of National Importance.

(Signed by J. F. Brazill, dated May 4, 1942, to Jarmon Thomas Conway, stating that he had been assigned to Civilian Public Service #31Camp located at Placerville, California. That you will therefore report to the LocalBoard named above at 9:30 a.m. on the 14th day of May, 1942)



Thereafter Witness Riordan testified as follows:

Mr. Walsh: Q. Do you know what was done with the original of Government's Exhibit 9 in evidence, Mr. Riordan?

A. The original of that order to report was mailed to the defendant, Mr. Conway.

Mr. Walsh: Gentlemen, I will read you Government's Exhibit No. 9 in evidence.

(Testimony of Thomas B. Riordan.)

(Government's Exhibit 9 in evidence was read to the jury)

Mr. Walsh: Q. After the original of Government's Exhibit No. 9 had been mailed to the defendant Conway, did you see him.

A. Yes, sir.

Q. And when?

A. It was on the 14th day of May, 1941. [37]

Q. And where? A. I saw him at our office.

Q. And did you have any *have any* conversation with him at that time? A. I did.

Q. Who else was present besides the defendant and yourself?

A. Mrs. Stoddard, my clerk, was present, and I don't recall if anyone else was in the office or not.

Q. What was that conversation?

A. Mr. Conway said to me that he was not going to go to this camp. He said, "I refuse to go."

Q. And what else was said at that time?

A. I stated to him—I said "Then, do you want to go to the Army?" And he says "No, I won't go to the Army," and I said, "Well, what do you want to do?" He said, "I don't want to do anything." I told him "all right you just remain seated there." I had several other men that were going to camp. I think there were about five or six altogether, so I told Mr. Conway to remain seated, and I went across the street to the bus station and arranged for transportation for these other men on the Santa Fe Bus that was leaving that morning for Placer, and

(Testimony of Thomas B. Riordan.)

I came back to the office, and Mr. Conway was still sitting there, and about that time the bus, the Santa Fe Bus, pulled up and these other men were all ready, ready to go, so I said, "Well, fellows," I said, "The bus is here." I said, "Let's go," and I turned to Mr. Conway and I said, "Now, Mr. Conway, this is your last chance." I said, "Do you still refuse to go to this civilian camp?" And he said, "Yes, I do," he said, "I am not going", I said, "all right, you just remain seated till I get back," so I took the other men there and gave the leader of the group the transportation, and I gave him the meal tickets providing meals for them while they were en route to camp, put them on the bus and when the bus pulled out, I went back to the office, and Mr. Conway was still there, so I asked Mr. Conway if he would come with me, and I—so he did, he came out and we got in my car, and I came in to the Phoenix here and came to the United States Attorney and reported the fact that he refused to go, to the United States Attorney, Mr. Flynn.

Q. What did you do with the defendant thereafter?

A. Then I took the defendant back to Glendale and told him that he could go wherever he wished to go, that we would turn him loose, but to keep us advised as to his address. We wanted to know where he was at all times, that any time he changed his mailing address he was to advise us. I told him he was a free man, he could do as he pleased. That is all.

(Testimony of Thomas B. Riordan.)

Q. Mr. Riordan, do you, as Clerk of Local Board No. 6, have the custody of what is known as the classification record? [38] A. I do.

Q. And can you tell us generally what that record is?

A. That record is a record of each registrant in our Board placed there in numerical order according to the man's order number. Each man's name, age and race appears in that record, as I say in numerical order, starting with Order No. 1 on through down to the larger order number.

Q. And can you locate for us in the classification record the record of this particular defendant?

A. Yes, sir.

Q. And what page is it on?

A. It appears on page 62 of the classification record.

Q. And on what line?

A. It appears on the 15th line down from the top.

Q. Following the number 1938?

A. Following order No. 1938.

Q. Who made the entries, all of the entries following that No. 1938? A. I did.

Q. And are they correct and accurate entries of the transactions which they purport to record?

A. Yes, sir.

Q. Were they made at the time that the actions were taken? A. Yes, sir.

Q. Have you made a true and correct copy of that record as pertains to this defendant's case?

(Testimony of Thomas B. Riordan.)

A. Yes; I have.

Q. And is this such a record (showing document to witness)?

A. Yes, it is.

Mr. Walsh: We offer it in evidence.

Mr. Chester: May I ask Mr. Riordan a question before it is admitted?

Q. Mr. Riordan, have you any erasures that appear on the original record there?

A. No, there is no erasure appearing, Mr. Chester.

[39]

Mr. Chester: No objection.

(The document was received as Government's Exhibit No. 10 in evidence)

And is as follows:

GOVERNMENT'S EXHIBIT No. 10
IN EVIDENCE

1. Order No. 1938.
2. Name of Registrant. Jarmon Thomas Conway.
3. Serial No. 1817.
4. Age 21.
5. Race White.
9. Date questionnaire mailed 5-20-41.
11. Date questionnaire returned 6-4-41.
13. Classification IV E.
14. Date notice to appear for physical examination mailed 10-16-41.
15. Date registrant appeared for Physical examination 10-25-41.

(Testimony of Thomas B. Riordan.)

20. Date of appeal to Board of appeal 11-7-41.
21. Date of Forwarding registrants record to appeal Board 11-27-31.
22. Date Notice of Board of appeals decision mailed by local Board 2-3-42.
23. Date Notice of continuance of classification mailed 2-3-42.
24. Date of order to report to Induction station 5-14-42 9:30.
27. Remarks: Refused to go to camp 5-14-42.
29. Order No. 1938."

Thereafter Witness Riordan testified as follows:
 Mr. Walsh: Q. From Government's Exhibit 10, in evidence Mr. Riordan, can you explain to us what the various entries therein mean?

A. In the first column the order number, the man's order number appears, which is 1938. That is followed by the name of the registrant, Jarmon Thomas Conway, followed by serial number 1817; age 21; race, white; date questionnaire was mailed was 5-29-41; date questionnaire returned was 6-4-41; his classification, which is 4-E; date notice to appear for physical examination mailed was 10-16-41; the date the registrant appeared for physical examination was 10-25-41; date classification of Local Board mailed to registrant was 10-29-41; date of appeal to Board of Appeal was 11-7-41; date notice of Board of Appeal's decision mailed by Local [40] Board was 2-3-42; date notice of continuance of classification mailed 2-3-42; date order to report for

(Testimony of Thomas B. Riordan.)

induction was May 4-42; time fixed for registrant to report for transportation to induction station was 5-14-42 at nine-thirty, A.M.; and under "remarks" is "Refused to go to camp on May 14th, 1942" That is followed again by his Order number 1938.

Mr. Walsh: That is all.

Thereupon the witness, Riordan, testified further on

Redirect Examination:

Mr. Walsh: Q. Mr. Riordan, I show you a part of Government's exhibit No. 5 in evidence, about counsel's question and ask you whose signature appears on the bottom of it.

A. Jarmon T. Conway, Route 11, Box 1170, Phoenix, Arizona.

Q. And the name of J. F. Rutherford is engraved *or* or printed on there, is it not?

A. Yes, it says, "Watch tower Bible & Tract Society, J. F. Rutherford, President." That is printed on there.

Mr. Walsh: That is all.

Thereupon the witness,

JAMES STOKELY

was called and sworn on behalf of the Government and testified as follows:

Mr. Walsh:

A. I am acting as Clerk of the Board of Appeals, Selective Service.

(Testimony of James Stokely.)

Q. I hand you Government's Exhibit No. 11 for identification, and ask you if that is your signature? A. That is my signature.

Q. And I will ask you if that letter accompanied the file when it was returned to the Local Board at Glendale? A. Yes, it did.

Mr. Walsh: I offer it in evidence.

Mr. Chester: Your Honor, I object to this being offered in evidence due to the fact that it is immaterial and has nothing whatsoever to do, so far as I can see, with the man's classification as a minister.

The Court: Well, he was not classified as a minister. It may be received.

Mr. Chester: Exception.

(The document was received as Government's Exhibit 11 in Evidence) [41]

Being as follows:

GOVERNMENT'S EXHIBIT No. 11
IN EVIDENCE

(Being a letter from James Stokeley, Clerk Board of appeals, Selective Service System to Chairman Maricopan County Local Board No. 6, Glendale, Arizona, returning the records in connection with the appeal of Jarmon Thomas Conway, and affirming the classification of registrant in Class IV-E.)

(Testimony of James Stokely.)

Thereafter Witness Stokeley testified as follows:

Mr. Walsh: Q. That letter was written, Mr. Stokeley, in the capacity as Clerk of the Board?

A. Yes, sir.

Q. And upon the authority of the Board?

A. Yes, sir.

Q. And upon the authority of the Board?

A. Yes, sir.

Mr. Walsh: That is all.

Thereupon the witness,

BLAINE B. SHIMMEL

was sworn and testified on behalf of the Government, and testified as follows:

Mr. Walsh:

A. I am chairman of that Board.

Q. Were you such in the month of November, 1941? A. I was.

Q. And you have been continuously to this date?

A. I have.

Q. I hand you Government's Exhibit No. 2 in evidence and ask you if that is your signature that appears thereon? A. Yes, sir.

Q. And if this is your signature here, (indicating document)?

A. Both signatures designated as Chairman of the Board of Appeals are my signatures.

Q. Were you present at the meeting of the

(Testimony of Blaine B. Shimmel.)

Board of Appeals when the case of the defendant Jarmon Thomas Conway was considered?

A. I was. [42]

Q. And the minutes of the actions taken by the Board as shown here; that is, classifying the registrant in Class 4-E by a vote of five to nothing, that was the action taken at that meeting?

A. That was.

That thereupon the defendant was sworn and testified as a witness in his own behalf as follows:

Testimony of

JARMON THOMAS CONWAY

Mr. Chester:

Q. Will you state your name for the Court, Mr. Conway? A. Jarmon Thomas Conway.

Q. This questionnaire which is in evidence before the Court is the one that you signed?

A. Yes.

Q. And you were later ordered to report for transportation and service in the—under the civilian direction, is that correct?

A. Yes, I was.

Q. Now, did you at any time after you were classified in 4-E appear before the Board, the Glendale Board? A. Yes, I did.

Q. Well, did you have any conversation with them?

A. I was asking to put in an appeal. I was per-

(Testimony of Jarmon Thomas Conway.)

mitted to sign on the back of my questionnaire for an appeal.

Q. And were you ever present when they confirmed that appeal?

Mr. Walsh: I object to that as entirely immaterial, your Honor. No requirement that he be present; no showing that he ever requested permission.

The Court: Sustained.

Mr. Chester: Well, that goes to the matter of intent, your Honor. It is a question of fact whether he did or not.

The Court: The objection is sustained.

Mr. Chester: Exception.

Q. And you put in your appeal? A. Yes.

[43]

Q. And was that acted upon, to your knowledge?

A. It was acted on. I got a card some time later from the—that it had been overruled and I still had the same classification.

Q. Did you attempt any further appeal?

A. Well, not at the same time, and then I went to the State Director of Headquarters and tried to put in an appeal there.

Q. State Director? Was it at the State Director of the Selective Service?

A. Well, yes, I suppose so.

Q. And did you request further appeal from the Appeal Board.

A. No, not—

Q. (Interrupting) Did you request a further appeal? A. Yes.

(Testimony of Jarmon Thomas Conway.)

Mr. Walsh: I object to that, your Honor. It is immaterial. He testified he did appeal and it was acted upon.

The Court: He can appeal to the President, can't he.

Mr. Walsh: Not on this type of case.

The Court: Well, I don't know.

Mr. Chester: Well, it is material to show that the man appealed as far as he could go, that he pursued all the remedies that were available to him.

The Court: Well, the question I want answered is whether he did enter an appeal from this order of the State Appeal Board. If he didn't, we are wasting time.

Mr. Chester: The Selective Service Rules provide that you should go to the State Director for further appeal, and the rules and laws covering the Selective Service System——

Mr. Walsh: (interrupting) Do you have those regulations?

Mr. Chester: We might call Mr. Shimmel, an expert witness.

(a document was handed to the Court by Mr. Walsh)

The Court: Is this the latest regulation?

Mr. Walsh: I am advised that it is, your Honor. [44]

Mr. Chester: I believe the section is 628.1, your Honor.

(The document was read by the Court)

(Testimony of Jarmon Thomas Conway.)

The Court: Well, the appeal can only be taken in the event one or more members of the Board dissent from the classification.

Mr. Walsh: The record here is that it was unanimous.

Mr. Chester: That is the Court's ruling?

The Court: The objection is sustained.

Mr. Chester: Exception.

Mr. Chester: Q. Are you a minister, Mr. Conway?

Mr. Walsh: I object to that, your Honor, it is immaterial, incompetent and irrelevant.

The Court: The objection is sustained.

Mr. Chester: What was the ruling, your Honor?

The Court: Sustained.

Mr. Chester: Q. How long have you been a member of Jehovah's Witnesses, Mr. Conway?

A. Ever since 1939.

Q. Since December, 1939? A. Yes.

Mr. Chester: I'd like to have these marked in evidence as one exhibit.

(Thereupon the documents were marked as Defendant's Exhibit A for identification)

Which documents consisted of the following:

DEFENDANT'S EXHIBIT A FOR
IDENTIFICATION

(Being 50 affidavits, signed by residents of Arizona, all duly subscribed and sworn to, to the effect that Jarmon Conway was a member of Jehovah's Witnesses and is regarded by af-

(Testimony of Jarmon Thomas Conway.)

fiant and others of the same faith as a duly ordained minister in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded)

Thereupon the following proceedings were had:

Mr. Chester: Q. I hand you these affidavits, Mr. Conway, and ask you if you know what they are?

Mr. Walsh: I object to that, the affidavits speak for themselves, your Honor.

The Court: He may answer. [45]

Mr. Chester: Q. Do you know what they are?

A. Yes, affidavits signed by——

The Court: (Interrupting) That is all right, they are affidavits.

Mr. Chester: And did you have these executed by the persons that signed them, yourself?

A. Yes.

Mr. Walsh: Are you offering them?

Mr. Chester: I am offering them.

Mr. Walsh: We object to them, your Honor, on the ground that they are irrelevant and immaterial and have no bearing on any issues in this case.

The Court: The objection is sustained.

Mr. Chester: Exception.

Thereafter the following proceedings were had:

Mr. Chester: Your Honor, at this time I would like to ask for a ruling of the Court. We have some fifteen or twenty witnesses that would testify——

Mr. Walsh: (interrupting) Just one moment.

(Testimony of Jarmon Thomas Conway.)

Perhaps this should be offered in the absence of the jury.

The Court: Oh, all they will testify to is that he is a minister, and you will object to it and I will sustain the objection. What is the use of sending the jury out? All right, is that all?

Mr. Chester: That is all.

The Court: You may proceed with the arguments.

(Thereupon the opening argument was presented to the jury by counsel for plaintiff).

Mr. Chester: At this time I should like to move for a directed verdict, for the reason—in favor of the defendant, for the reason that the Board as has been admitted by this Board here, found him fit for general service, which automatically puts him into the class that should be inducted in non-combatant service in the armed forces. Instead of following the rules and regulations of the Selective Service Board as is set forth, they ordered him to a conscientious objector's camp.

The Court: The motion is denied. Go ahead with your argument. [46]

That thereafter on said 9th day of April, 1943, before the Court had instructed the jury, defendant made and filed the following requested instructions to the jury.

(“Title of Court and Cause)

DEFENDANT’S REQUESTED
INSTRUCTIONS.

1. The Selective Service Board cannot bind a registrant by an arbitrary classification against all of the substantial information before it as to his proper classification. Classifications by such agency must, under the powers given it by Congress be honestly made, and a classification made in the teeth of all substantial evidence before such agency is not honest but arbitrary.

2. An individual cannot be deprived of his rights of freedom of person even in war time, except through machinery which guarantees the fundamentals of “Due Process of Law” and a classification by a Selective Service Board not supported by any evidence is arbitrary and constitutes an abuse of discretion depriving defendant of due process of law and his right to freedom of religion guaranteed under the Constitution of the United States.

3. As to conscientious objectors, it is apparent that they may be required to serve in noncombatant work either by induction into the land or naval forces or by assignment to work under civilian direction. If a conscientious objector is found by the Board to be that of one whose claim that he is a conscientious objector has been sustained by the Board for “induction” into the land or naval forces for noncombatant service, he cannot be required by the Board to be assigned to serve under civilian di-

rection, and violates no duty required of him under the Act if he fails to report for such service.

4. The provision that one who shall "knowingly" fail or neglect to perform duty required by Selective Service Act shall be subject to certain penalties implies wilful knowledge and a specific intent and defendants in selective service cases are permitted to give their reasons for failure to obey, as going to intent.

W. H. CHESTER,
Attorney for Defendant,
412 Phx. Natl. Bank Bldg.
Phoenix, Arizona."

(Which instructions were not given). [47]

Thereafter, after argument, the Court instructed the jury in part as follows:

You are instructed that even if a Local Draft Board acts in an arbitrary and capricious manner, or denies a registrant a full and fair hearing, nevertheless the registrant must comply with the Board's order. The registrant may not disobey the Board's orders and then defend his dereliction by collaterally attacking the Board's administrative acts. In other words, the registrant may not lawfully disobey the Local Draft Board's order to report for induction and then offer as a defense for his failure to comply with the Board's order, some arbitrary or capricious Act of the Board in determining his classification and issuing the order.

Any Exceptions? I have refused your requested instructions.

Mr. Chester: I take exceptions to the Court's re-

fusal to give the defendant's requested instructions, and I also take exception to the instruction wherein the Court makes the statement on the decision of the Selective Service Board as being final except where an appeal is taken, and to the instruction that the defendant cannot offer as defense that the order of the Board is arbitrary and capricious, as that violates the due process of law and the provisions of the Constitution.

The defendant presents the foregoing as his proposed Bill of Exceptions in the above entitled matter, and prays that the same may be settled and allowed.

Dated this 9 day of June, 1943.

W. H. CHESTER

Attorney for Defendant.

412 Phx. Natl. Bank Bldg.

Phoenix, Arizona. [48]

The foregoing Bill of Exceptions is correct and may be settled and allowed by the Court.

Dated: June 9, 1943.

FRANK E. FLYNN

United States Attorney.

The foregoing Bill of Exceptions is correct and is hereby settled, allowed and approved.

Dated: June 9, 1943.

DAVE W. LING

Judge United States District
Court.

[Endorsed]: Filed June 9, 1943. [49]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Comes now the defendant above named, by his attorney, W. H. Chester, and says that subsequent to the institution of the above entitled cause and during the trial thereof on the 9th day of April, 1943, the Court committed manifest error in the admission of evidence and in the rulings upon motions of the defendant, and for his assignments of error specifies the following:

I.

That on the 17th day of Feby., 1943, the defendant moved to quash the indictment upon the grounds and for the reasons that said information does not state facts sufficient to constitute a crime or offense and that the indictment failed to state that the action of the Glendale, Arizona local selective service board acted in accordance with the rules and regulations of the selective service system or that it acted in accordance with the Selective Service Act and the provisions thereunder. That the indictment failed to show that the defendant was properly classified or that the orders of the board were in accordance with the rules, regulations and laws pertaining to the Selective Service System. That the defendant herein had been heretofore tried before the District Court of the United States for the District of Arizona for the same offense charged in the indictment and that indictment under this cause constitutes double jeopardy. That the Honorable Court erred in denying said motion to quash, which

order was entered on the 17th day of February, 1943. [50]

II.

The Court erred in overruling defendant's objection to Exhibit number 7 in evidence to which defendant excepted, said Government Exhibit Number 7 being a letter from A. M. Tuthill, State Director Selective Service of the State of Arizona to J. S. Brizill, Chairman Maricopa County Local Board No. 6, Glendale, Arizona, as follows:

Answering your telephoned request of November 15, 1941, the name of Jarmon Thomas Conway does not appear in the official list of Jehovah's Witnesses known as "Bethel Family" and as "Pioneers" as furnished this office by National Headquarters, Selective Service System.

This letter, it is contended by the defendant is immaterial, and prejudicial to the defendant in that under Selective Service Opinion Number 14 (see Government's Exhibit Number 6) it is provided that in regards to members of Jehovah's Witnesses, "It is impossible to make a general determination with respect to these persons as to their relationship to Jehovah's Witnesses. Whether or not they stand in the same relationship as regular or duly ordained ministers in other religions must be determined in each individual case by the Local Board, based on whether or not they devote their lives in the furtherance of the beliefs of Jehovah's Witnesses, whether or not they perform functions which are normally performed by regular or duly ordained ministers of

other religions, and finally, whether or not they are regarded by other Jehovah's Witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded? As may be seen from above opinion, each case must stand upon its own merits and a statement as to whether or not the defendant's name appeared on the roll of "Bethel Family" or "Pioneers" would not have a conclusive bearing on the question as to whether or not the defendant was a "minister". [51]

III.

That the Honorable Court erred in overruling defendant's objection to the receipt in evidence of Government's Exhibit No. 11 in evidence, which purports to be a letter from James Stokeley, Clerk of the Board of Appeals, Selective Service System to the Chairman of Maricopa County Local Board No. 6, Glendale, Arizona, returning records in connection with the appeal of the defendant herein and affirming classification of registrant in Class IV-E for the reason that said letter was immaterial due to the fact that the defendant was denied a proper hearing as to his qualifications and as a minister and any purported decision based on a file of defendant's case where no hearing had ever been granted to him regarding his classification either before the Local Board or the Board of Appeals would be and is incompetent, and immaterial.

IV.

That the Honorable Court erred in sustaining the Government's objections to the introduction in evi-

dence of Defendant's Exhibit A being some 47 affidavits of Jehovah's Witnesses affirming the fact that the affiants regarded the defendant as a minister for the reason that such affidavits would tend to prove that the order of the Maricopa County Local Board No. 6 to appear for work under civilian direction was an unlawful order in that it violated the rules of the Selective Service System by wrong classification of a registrant and by the issuance of orders pursuant to such unlawful classification. Admission of said affidavits in evidence would tend to disprove intent to violate any lawful order of the Maricopa County Local Board No. 6 issued to the defendant. It is the contention of the defendant that the Court is not bound to convict and punish one for disobedience of an unlawful order by whomsoever made. [52]

V.

The Honorable Court erred in denying the motion of the defendant for a directed verdict, said directed verdict having been requested by the defendant for the reason that the Maricopa County Local Board No. 6 of Glendale, Arizona had found the defendant fit for general service, which automatically put him into the class that should, under Selective Service Regulations, place him as an inductee in non-combatant service in the armed forces. The said Local Board, instead of following rules and regulations of the Selective Service Board, ordered the defendant to a conscientious objectors' camp. It has been held heretofore by the United States Circuit Court of Appeals for the Ninth Cir-

cuit that a conscientious objector, found fit for "general service" is required to obey only an order for induction for service into the land or naval forces and that a Local Board has no power to "assign" such registrant to work of national importance under civilian direction and order him to report to such authorities. The Circuit Court held that, "It is no violation of Section 11 of the Act to fail to obey an order which the Board had no power to make."

VI.

That the Honorable Court erred in refusing to give to the jury the defendant's requested instructions and further erred in the court's instruction to the jury to the effect that the defendant cannot offer as a defense that the order of the Board is arbitrary and capricious, this latter instruction patently violates the constitutional provisions guaranteeing due process of law and the right of freedom of the person and freedom of religion. Defendant duly excepted to the Court's failure to grant his requested instructions and to the Court's granting or giving instruction depriving defendant of defense where the Board acted in an arbitrary and capricious manner. [53]

The above assignments of error are hereby respectfully submitted this 9th day of June, 1943.

W. H. CHESTER

Attorney for Defendant
412 Phoenix National
Bank Building
Phoenix, Arizona

Service of copy acknowledged this 9th day of June, 1943.

F. E. FLYNN (s)
United States Attorney

[Endorsed]: Filed Jun 9 1943. [54]

In the United States District Court for the
District of Arizona
April 1943 Term At Phoenix

MINUTE ENTRY OF
WEDNESDAY, JUNE 23, 1943

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding

C-6420

[Title of Cause.]

On motion of Wm. H. Chester, Esquire, counsel for the defendant,

It Is Ordered that the following exhibits admitted in evidence or marked for identification at the trial of this case and the duplicate of the Reporter's transcript herein, together with the duplicate of the Reporter's transcript filed in Case No. C-6333-Phoenix, United States of America vs. Jarmon Thomas Conway, be transmitted by the Clerk of this Court to the United States Circuit Court of Appeals for the Ninth Circuit, with the transcript of Record on Appeal herein:

Government's exhibits Numbers 1 to 11 inclusive, in evidence.

Defendant's exhibit A, marked for identification.

[55]

In the United States District Court for the
District of Arizona

United States of America

District of Arizona—ss:

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of said court, including the records, papers and files in the case of United States of America, plaintiff, versus Jarmon Thomas Conway, defendant, numbered C-6420 Phoenix, on the docket of said court.

I further certify that the attached pages, numbered 1 to 55, inclusive, contain a full, true and correct transcript of such matters of record as are pertinent to the appeal in said cause, as the same appear from the originals thereof remaining on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that the duplicate of the reporter's transcript filed in said cause together with the duplicate of the reporter's transcript filed in cause numbered C-6333 Phoenix, United States of America, plaintiff, versus Jarmon Thomas Conway, defend-

ant; and the originals of Government's exhibits numbered 1 to 11 inclusive, in evidence, and of Defendant's exhibit marked A for identification, are transmitted herewith pursuant to order of the Court.

I further certify that the Clerk's fee for preparing and certifying this said transcript of record amounts to the sum of \$11.00 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said Court at Phoenix, Arizona, this 29th day of June, 1943.

[Seal] EDWARD W. SCRUGGS, Clerk
By WM. H. LOVELESS
Chief Deputy Clerk. [56]

[Endorsed]: No. 10414. United States Circuit Court of Appeals for the Ninth Circuit. Jarmon Thomas Conway, Appellant. vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed July 1, 1943.

PAUL P. O'BRIEN
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10414

UNITED STATES OF AMERICA,

vs.

JARMON CONWAY,

Defendant.

STATEMENT OF POINTS ON WHICH APPELLANT
INTENDS TO RELY ON APPEAL

The Appellant relies upon the assignments of error appearing in the transcript of the record as the Statement of Points on which Appellant intends to rely on Appeal and hereby refers to said Assignments of Error as appearing in said transcript and adopts the same as his Statement of Points on which Appellant intends to rely on appeal and incorporates the same herein, at this point, by reference as though set out herein in full.

W. H. CHESTER

Attorney for Appellant
412 Phoenix Nat'l Bank
Bldg., Phoenix, Arizona

Copy received July 12th, 1943.

F. E. FLYNN

U. S. Attorney

By E. R. THURMAN

Asst. U. S. Attorney

[Endorsed]: Filed Jul 13 1943. Paul P. O'Brien,
Clerk.

